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Two Per Cent. Fund.

SPEECH

OF

HON. ALLEN G. THURMAN,

OF OHIO,

IN THE SENATE OF THE UNITED STATES, FEBRUARY 20, 1873.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 836) declaring the true construction of a statute.

Mr. THURMAN said:

Mr. PRESIDENT: I know that time is so valuable that it is the duty of every Senator to economize it as much as possible. And it is the interest, too, of whomsoever would address the Senate now, to speak as briefly as he can if he wishes to be listened to. I shall therefore endeavor to present, in the fewest possible words, the view which I take of the question before the Senate. I cannot, in the time allowed me, elaborate those views as I would do were there ample opportunity for that purpose, for I believe that if time would allow a full discussion on the merits of this bill it would be promoted by such a discussion. But I know that I must condense, and therefore, if I can have the attention of the Senate, I will endeavor to present some considerations which, to my mind, are satisfactory for the support of this bill, in very few words. And in order that I may economize time, I pray that I may not be interrupted in the course of my remarks, unless some very important reason for interruption should exist. At the close of my remarks I shall be very happy to answer any question that any Senator may deem it material to put.

The Senator from Vermont [Mr. EDMUNDS] yesterday treated this claim with something more than scorn. He called it a bald claim, and said, in effect, that the audacity of the thing was its chief merit, and intimated that but for outside pressure it would have no support within these walls. Now, sir, let us see by whom this claim is presented. It is presented by solemn resolutions of the Legislatures of three States; resolutions adopted by men acting under as high a sanction of duty and as high an obligation of oath as rests upon the conscience of any Senator here. Their memorial is presented by the three Governors of those States, respectfully urging the allowance of this claim. It went to the House of Representatives; was referred to the Judiciary Committee of that body two or three years ago; was reported by that committee favorably; came within one vote, I believe, of getting two thirds of the votes of that House on a motion to suspend the rules for its consideration; was reported again at this session of Congress favorably by that committee, whose report is upon our tables, and passed that body, if I may be permitted to say so, by an overwhelming majority. It is supported on this floor by the Senators from those States and other Senators nowise interested in it. And I submit that a claim coming with these sanctions is not to be treated as a claim whose audacity is its chief merit.

Why, sir, if the Senator from Vermont had been denouncing an attempt to get money on false pretenses he could scarcely have spoken more severely than he did. But I say it will not do to charge that this claim, presented in the way I have said and with the sanctions of which I have spoken, is an attempt to get money upon false pretenses. I know for my own State, that Ohio would scorn to receive a hundred times this amount upon any false pretense whatsoever. Not one dollar of this money would that State ever receive if she did not believe that it was upon a conscientious claim; and what is true of her is doubtless true of the other two States. No, sir; these States are no beggars at your door. They do not come here as charity children, as one might suppose from the remarks of the Senator from Vermont. They come here respectfully, to lay before you the facts of this case, and submit to your judgment, whether, upon those facts, they are entitled to the relief they ask. They come in no sense as beggars. They come in no insolent manner either, but come simply presenting their claim to your consideration and asking you if you find it to

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be just, as they believe it to be, to enact the legislation that is required.

But, Mr. President, it is not simply the sanction of these States that this claim has, and which I think should be sufficient to protect it from the charge of being an attempt to get money under false pretenses. Let us see what other sanctions it has; let us see what other names are recorded in its favor. I hold in my hand the opinions of the following persons in favor of this claim: the opinion of Abraham Lincoln, President of the United States; of Thomas A. Hendricks when Commissioner of the General Land Office; of Judge Davis of the Supreme Court of the United States; of Judge Drummond of the United States district court of Illinois; of Judge Walker of the supreme court of Illinois; of the late Chief Justice Caton of the supreme court of that State; of Judge Cartter of the supreme court of this District; and of Benjamin R. Curtis, whom we all know, and upon whom it is not necessary for me to pronounce any eulogy; not his argument as a lawyer, but his solemn opinion; an opinion asked for, and not asked to be one thing or the other, but simply and nakedly the true convicions of his mind.

Nor does it stand upon these sanctions alone. I have before me a letter of the First Comptroller of the Treasury, before whom this claim would have to go, and I ask that this letter may be read; first, for the purpose of showing that even the Department, or at least one of its most prominent officers, regards it as equitable, and in the next place, to explain why it is that some delay has occurred in the presentation or settlement of the claim. Before I do that, however, I ought to say that, as appears by the correspondence and facts stated in this pamphlet, the consideration of this claim was delayed at the instance of President Lincoln, although he believed it to be perfectly just, delayed because we were then in the midst of a war, and he said that it did not become a patriotic State like Illinois to press a demand on the public Treasury at such a time as that.

Mr. LOGAN. Read what he said.

Mr. THURMAN. No, I do not wish to take up time; I cannot stop to read it; but I will ask that the letter from the First Comptroller which I send to the desk may be read.

The Chief Clerk read the following letter:

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
February 7, 1873.

SIR: In answer to your inquiry I have the honor to state that I did not finally decide upon the two per cent. claim of Illinois, although I examined it with much care soon after it came to this office.

The claim was equal in its equities with similar grants made to the States of Alabama, Mississippi, and Missouri, but I doubted the construction put upon existing laws by the agents of the State.

I was the more inclined to a strict construction of the laws, because my own State was largely interested in the question. You asked the Secretary of the Treasury to take the opinion of the Attorney General, but I objected to the submission of the case to him, because if the claim should be allowed and paid, it would be upon the concurrent action of the Attorney General, the Secretary of the Treasury, and the Comptroller, each of whom was a citizen of one of the States interested, and each of a separate State. I thought that under such circumstances a construction to warrant payment should be clear and undoubted, otherwise our action might be questioned and we censured. The want of equity did not cause a failure to allow and certify the claim.

I am, very respectfully,
R. W. TAYLER, *Comptroller.*

Hon. ISAAC N. MORRIS.

Mr. THURMAN. Mr. President, that is one reason why this claim has not been settled at the Department. The decision of Judge Otto when he was in the Department of the Interior was read yesterday as if that was conclusive of the case. He was a mere subordinate, and that decision has been overruled in one of its most material points. What did he undertake to decide? He undertook to decide that he would not even pay the two per cent. upon the Indian reservations. In that he was overruled and the money was paid. But he further took the ground that he would not pay the two per cent. upon the sales of the public lands, and taking that ground, the question is brought here. How brought here? Brought here for this reason: because owing to the lapse of time of which I have already spoken, and the reason why that lapse of time occurred, a period so great had elapsed that according to the usage of the Department that decision of his could not be reviewed and reversed, and therefore these parties had to come to Congress. So much for that.

Mr. President, I am apprehensive that in the much speaking on this bill we have lost sight perhaps, to some extent, of what the bill is. Let us see what it is. It is a short bill, and I can read it in a moment:

Be it enacted, &c., That the true intent and meaning of the second section of the act approved March 3, 1857, entitled "An act to settle certain accounts between the United States and the State of Mississippi and other States," is, that all the other States, to wit, Ohio, Indiana, and Illinois, which have not received the full amount of their five per cent. of the net proceeds of the sale of public lands lying within their respective limits, as mentioned in their several enabling acts, in money, shall have their accounts stated, both on the public lands and reservations, and such cash balance as has not been paid to said States allowed and paid.

That is the whole of this bill. It is a bill declaring the true intent and meaning of an act approved March 3, 1857. Well, sir, what was that act of March 3, 1857? Before I read it, however, I should read the act to which it referred, an act in regard to Alabama passed in 1855. The act in regard to Alabama was as follows:

"That the Commissioner of the General Land Office be, and he is hereby, required to state an account between the United States and the State of Alabama, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled under the sixth section of an act of March 2, 1819, for the admission of Alabama into the Union; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to the said State five per cent. thereon, as in case of other sales."

Then, two years after the passage of that Alabama act, the act of March 3, 1857, referred to in the pending bill, was passed, and it is in these words:

"That the Commissioner of the General Land

Office be, and he is hereby, required to state an account between the United States and the State of Mississippi for the purpose of ascertaining what sum or sums of money are due to said State heretofore unsettled, on account of the public lands in said State, and upon the same principles of allowance and settlement prescribed in the act to settle certain accounts between the United States and the State of Alabama, approved the 2d of March, 1855; and that he be required to include in said account the said reservations under the various treaties with the Chickasaw and Choctaw Indians within the limits of Mississippi, and allow and pay to the said State five per cent. thereon, as in case of other sales, estimating the lands at the value of $1 25 per acre."

That is the first section. Now, mark it, that refers to Mississippi alone. Alabama had been provided for by the former act, and when this bill was pending, which as introduced, related to Mississippi alone, that is, contained simply this one section which I have read; it was amended by adding to it a second section in these words:

"That the said Commissioner shall also state an account between the United States and each of the other States upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at $1 25 per acre."

That second section in the most mandatory terms required that an account should be stated "with each of the other States." What is meant by "each of the other States?" Each of the other States that were entitled to five per cent. according to their enabling acts—that there should be paid to them all of that five per cent. which had not already been paid. Now, mark it, there is not one word in the act allowing any set off against the claim of the States; there is not a word that subjects this claim of the States to any counter-claim whatsoever. The only abatement of the claim of a State is to be the amount paid to the State. That is all there is of it.

But what then took place? With this plain and mandatory statute before them, the Department undertook to say not that the Government has paid Illinois, not that it has paid Indiana, not that it has paid Ohio, for it had never paid to one of them one single cent of this two per cent. fund; but that the Department would set off against the amount to be ascertained under this act to be paid to these States certain moneys which had been expended by the Government in the construction of the Cumberland road. And that is the question now, and the sole question before the Senate, whether or not it is right and proper to set off against the claim of the States to this two per cent. the expenses upon the Cumberland road. Mark it, there is not one word in the statute that authorizes any such set off; there is not one word that seems to contemplate any such set-off; and the action of Congress, as I will show in a moment, utterly forbids the idea that any such set-off was intended. Missouri was in precisely the same category with Ohio, Indiana, and Illinois. Under her enabling act, her two per cent. was also to be expended by Congress in the construction of roads leading to Missouri; and yet, after the passage of this act of 1857, Congress solemnly decided that Missouri should have her two per cent. without any deduction whatsoever for money expended in the construction of the Cumberland road, and thus settled by the clearest possible decision the question which is now before the Senate. It was impossible to decide that Missouri was entitled to her two per cent. without at the same time deciding in principle that Indiana, Illinois, and Ohio were entitled to their two per cent. They stood in principle precisely alike.

It was said by the Senator from New Jersey, [Mr. FRELINGHUYSEN,] if I understood him aright, that the two per cent. fund was released to Missouri in consideration of a certain railroad that she had built. I do not so understand it. On the contrary, Government aid was granted to Missouri in the shape of a donation of land to aid in the construction of her railroads. No, sir; Missouri, understanding this act of 1857 as I understand it, proceeded by act of her Legislature to provide for the disposition to be made of the two per cent. fund to which she was entitled from the Government, and the Congress of the United States ratified that act of the State of Missouri, disposing of her two per cent. fund. There is a solemn adjudication upon this question, made soon after the passage of the act of 1857.

But now, Mr. President, let us see how this two per cent. originated. The State of Ohio was the first State admitted into the Union in which there were public lands; that is, lands belonging to the United States. Kentucky was admitted before, but there were no public lands in Kentucky. Ohio was the first State admitted in which there were any public lands belonging to the United States.

Mr. FRELINGHUYSEN. I do not wish to interrupt the Senator from Ohio; but if he is under the impression that I made an error in reference to Missouri, I can correct him by reading the statute.

Mr. THURMAN. I will thank the Senator to send it to me after I am done, and then I will look at it.

Mr. FRELINGHUYSEN. I will call attention to it myself after the Senator is done.

Mr. THURMAN. In 1802 Congress passed what is known as the Ohio enabling act. It was an act entitled an "An act to enable the people in the northwestern territory to form a State government, and for the admission of the State into the Union." That act contained certain propositions on the part of the General Government, and among them was this proposition:

"That one twentieth part of the net proceeds of the lands lying within the said State, sold by Congress, from and after the 30th day of June next, after deducting all expenses incident to the same, shall be applied to the laying out and making public roads leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said State and through the same, such roads to be laid out with the authority of Congress, with the consent of the several States through which the road shall pass."

That is a proposition that five per cent. of

the proceeds of the sales of public lands in the State of Ohio should be laid out for the purpose named. But, sir, that was upon a condition; and what was that condition?

"*Provided always*, That the three foregoing propositions herein offered"—

This one about the five per cent. was only one of the three—

"are on the condition that the convention of the said State shall provide by an ordinance irrevocable without the consent of the United States, that every and each tract of land sold by Congress from and after the 30th day of June next shall be and remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose whatever, for the term of five years from the day of sale."

There the State was required to give a consideration for this five per cent.; and no one denies that that consideration has been fully paid by the State, and no one denies that the consideration was an ample consideration for the five per cent. The State did refrain from taxing every acre of public land in Ohio for five years from the date of its sale. That was an extremely onerous provision upon the people of Ohio. It would have been an onerous provision if every acre of land in Ohio had been public land sold by Congress, because it would have deprived the people of that State of all power to levy a land tax at all, and would have put the entire burden of taxation either upon personal property or the polls of the people, because the government of Ohio could not tax the public lands so long as they belonged to the United States, and if for five years it could tax no lands sold by the Government it would be utterly without power to levy a land tax for five years, and that at a time when in the youth of the State it most needed the power to levy such a tax.

But, sir, that was not exactly the case, and now I am to mention a circumstance which shows how much harder it was upon the State. The fact was that at the time of the passage of that act only about one half of the area of Ohio was public land belonging to the United States. In the northern part of the State was that large body, composed afterward of ten or twelve counties, called the Connecticut Western Reserve, the land in which belonged to the State of Connecticut, not one foot of it to the United States. Then, sir, in the southern part of the State was that large tract called the Virginia Military Reservation, not one foot of which could be sold by the United States, because it was reserved to satisfy military bounties. But that was not all. There was a body of land called the Refugee Lands set apart for allowances to refugees from Nova Scotia and Canada in the war of the Revolution, which was granted to them and not sold at all by the General Government. Then in addition was that large body of lands sold before the admission of the State into the Union, to what was called the Ohio Company, a company formed in the New England States to purchase land in the northwestern territory for settlement by New England people, and which embraced nearly one eighth of the State of Ohio. Then, besides that, was the grant made before the admission of the State to the French settlers, known as the French grant. Then, in addition to that, was the New Jersey settlement, what was called Symmes's Purchase, including the county of Hamilton and the city of Cincinnati, and including a large body of land, something more than half a million acres. Then, besides all these, Congress saw fit to take out of the body of the public lands in Ohio another large tract to satisfy what are called the United States military bounties. So that, sir, the number of acres of public land to be offered for sale at the public land offices in Ohio was only about one half of the area of the State.

Then what was the effect of this provision in the Ohio enabling act? It was to make one half the people pay the whole State revenue derived from land taxes. It was to burden the people whose land was not exempt from taxation. Every man in the Connecticut Western Reserve, every man who owned land in the Virginia military district, or in the United States military district, or in the refugee lands, or in the Ohio Company's purchase, or in Symmes' purchase, or in the French Grant—every one of these men could be made to pay a land tax, and thus the burden of supporting the Government was thrown upon about one half the people of that State. Sir, there never was a more unwise, or a more impolitic, and I must say a more unjust exaction than Congress made of the State of Ohio when it thus required that State to put the whole burden of the State government for five years upon the shoulders of one half of her people. It is a thing that never ought to have been required of her at all, and that never has been required of any State since the admission of Arkansas into the Union. None of them since admitted has been required to make any relinquishment of the power of taxation.

Then, Mr. President, this five per cent. was no bounty, as the Senator from Vermont spoke of it yesterday. An ample and a full and an onerous consideration was given for it. It was nothing in the nature of a bounty. While on this branch of the subject let me say further that there is not a grant which has been made to the people of the new States that any Senator from an old State ought to call a bounty. I do not speak of railroad land grants to corporations. To them I have always been opposed, as the Senate knows, as strenuously as any man on this floor; but the grants to the States themselves have never been bounties. Why, when you gave five per cent., if it had been a gift to the settlers of Ohio, when you provided that they might have section sixteen for school purposes, for whom were you of the eastern States making provision? Making it for your own children, making it for your own brothers, for your own sisters, some of you for your own fathers. When the Senator says that the old States endowed that new State, let me tell him the dowry was to their own children; it was a dowry granted to their own offspring, to their own relatives.

It was not a grant to a people who did not exist; it was a grant to their own kith and kin.

But, again, sir, it was not a bounty for another reason. The Government was a great land-owner there. Every inhabitant that it could induce to go to that State increased the value of its land in the State, and unless there should be migration there its lands would remain unsold. To those lands it looked as a source and means of paying the debt of the Revolution. They were, in the first place, consecrated to that purpose. It was necessary to induce settlers to go there and to hold out advantages if they would go there. But, sir, let me say that so far from holding out advantages too great, it never offered advantages liberal enough. Let me call the attention of the Senate to the fact that there is not one foot of land in the whole State of Ohio occupied by a human being that was not paid for. Not one homestead ever was acquired in Ohio by settlement. Every acre was paid for, and a large part of it, all purchased before 1820, I believe, paid for at the high price of two dollars an acre in coin.

Mr. EDMUNDS. I wish to ask my friend a question if it will not interrupt him.

Mr. THURMAN. I would prefer not to be interrupted. If the Senator thinks it material, however, I will not object. In order not to waste too much time, I said at the outset that I should prefer not to be interrupted.

Mr. EDMUNDS. I beg the Senator's pardon; I did not happen to be in at the moment.

Mr. THURMAN. That was the state of the case known by Congress when the legislation that is now under review took place. But now to come back from these more general considerations, and into which I should not have gone but in reply to the Senator from Vermont, this was the contract with the State of Ohio: that five per cent. of the net proceeds of the public lands should be used in the construction of roads; and by the act of 1803 it was provided that three per cent. of the five might be appropriated by the Legislature of the State for roads within the State, and the remaining two per cent. were to be appropriated by Congress for the construction of roads "from the navigable waters emptying into the Atlantic, to the Ohio, to the said State, and through the same." The money was to be employed in the making of roads from the navigable waters flowing into the Atlantic "to the Ohio;" that means the Ohio river, for there was no State then called Ohio, and then "to the said State;" that is, the State to be formed under this enabling act, and then "through the same," that is through the State.

Now, Mr. President, did Congress ever perform that contract? That is a question which I wish to submit to the Senate. In the first place, what was expected by the parties when that compact was made? What was expected by the parties was this, undoubtedly, that such a road should be made as could be made with the fund provided. Every one must see that that was the expectation of the parties. Here is a provision for making a road to the Ohio river, and to the State to be formed, and through the State, and a fund set apart for that purpose; and evidently it must have been within the contemplation of the parties that such a road would be made as could be made with the fund thus devoted to its construction. It will be said at once that that would be a simple wagon-road. Yes, sir, it would be a simple wagon-road, and that was precisely what was in the minds of the parties to that contract; for at that time there were not in all the length and breadth of the United States ten miles of turnpike road. There had not at that time been constructed on the face of the habitable globe one mile of macadamized road; there was not at that time leading to the State of Ohio one single wagon-road. At that time no man could get to the State of Ohio unless he went by water across Lake Erie or down the Monongahela or the Alleghany river, or unless he went with his pack-saddle on his horse, following the blind path that had been made across the mountains.

What the people of Ohio wanted, therefore, was a wagon-road. They wanted it made speedily, so that emigration could pour into their new State, and they supposed that with this fund a good wagon-road could be made; and if Congress had gone to work and made it then, it would have been of infinitely more advantage to the State than was the tardy construction of the Cumberland road a third of a century afterward. That was what was in contemplation by the parties. It never could have been in the contemplation of the people of Ohio when they agreed to that contract that Congress was to undertake some great national work, the construction of which for fifty miles from the navigable waters emptying into the Atlantic would consume all the two per cent. fund. That never could have been the idea at all. They never would have agreed to that. What would have been the use of their agreeing that this fund should be appropriated to the making of some magnificent national highway, when before you had built fifty miles of that highway, beginning in the State of Maryland, the whole fund would be exhausted, and you would have simply a little local road of fifty miles in the State of Maryland. They never understood any such thing as that, and therefore at the very outset, when Congress determined to make a great national turnpike, it abandoned the true idea of this compact. But, sir, it did not abandon it in that alone; it never fulfilled it to the letter in any way whatsoever.

Where was the road contemplated by the compact to be made from? It was to be made "from the navigable waters emptying into the Atlantic." That evidently means from waters where navigation can exist. It does not mean that you shall go to the head of a stream where a duck could not swim for want of water and call that navigable water; it means that you shall

begin at a water which is navigable. Did Congress ever do any such a thing? No, sir, never. It commenced this road at the town of Cumberland, in the State of Maryland, where there could be no navigation except by a canoe, where in ordinary times not even our common flatboat of the Ohio or the Mississippi could ever float, and where the course of the Potomac is interrupted every three or four miles by shallows and obstructions formed one after another so that navigation is utterly impossible. Why, sir, do we not know it? Where does navigation on the Potomac begin? It begins near the boundaries of this District, and it begins no higher up the river. Here are Great Falls and Little Falls within or near the boundaries of this District, and there is not one mile above them that can be called the navigable waters of the Potomac in any proper sense. And yet Congress saw fit to go one hundred and sixty or one hundred and seventy miles further up the Potomac and up one branch of it and to begin the construction of this road at that place as if that were connecting the navigable waters flowing into the Atlantic with the Ohio river and the State of Ohio.

But what next? Congress, as I said, commenced the construction of a great turnpike road. Was that a turnpike road that could be built out of the two per cent. fund of Ohio? Let us see what the fact was. The two per cent. fund of Ohio amounts simply to about $400,000; that is all; and this great National road that Congress undertook cost from Cumberland to the Ohio river $2,800,000, seven times as much as the whole amount of the two per cent. fund. Why, sir, the whole amount of the two per cent. fund and nearly $300,000 more were expended upon that road before it touched the western limits of the State of Maryland. The amount expended in Maryland was six hundred and eighty-odd thousand dollars, seventy per cent. more than the whole two per cent. of Ohio; and will anybody tell me that it was a fulfillment of the trust in this compact to make a turnpike road from the city of Cumberland to the western boundary of the State of Maryland? Will anybody say that that was a compliance by Congress with the terms of this compact?

Did the people of Ohio consent to any such thing as that, that their two per cent. fund should be taken to make thirty-two miles of road in the State of Maryland, where the road would cost the most, too, for there is where it crosses the great chain of the Alleghany mountains?

Congress, then, I say, from the very first, repudiated this compact, so far as executing it was concerned; and what did Congress mean? It meant to do better than the compact required; not better for the State of Ohio alone, not better for the great Northwest alone, but better for all the people whether East or West. It thought it would be a scurvy affair to build a mere ordinary wagon-road from Cumberland to the Ohio river and through the State of Ohio; and, therefore, although it intended at first to apply the two per cent. toward the construction of the Cumberland road, it did not treat it as an execution of the compact at all, but it treated that work as a great national work worthy of a great expenditure from the Treasury of the United States.

That being the case, let us see what took place afterward. Congress commenced the construction of the National road about 1806. It progressed very tardily. The first road was to be built with cobblestone paving, or something like it. They built some miles of that, and afterward threw it all away. They spent some one hundred thousand dollars or more out of the two per cent. fund of Ohio in building a road that had all to be abandoned; and instead of that they began the construction of a macadamized road. Congress recognized the fact—and to this I cannot call the attention of the Senate too seriously—that it was not executing the compact with the State of Ohio, but that it had undertaken a great national work; and it recognized the fact that if it undertook a great national work of this kind it was under a moral obligation to complete that work. It had no right to take our money and expend it within twenty miles of the town of Cumberland in Maryland. If it saw fit to take the money for that purpose, in order to construct a great national work, then it was bound in honor and in morals to finish that work. And what I say of Ohio is equally true of Indiana and equally true of Illinois; and that was the idea upon which Congress went, that it would not execute this compact as the parties originally understood it, but that it would do better; that it would make, not a mere wagon-road, but a great national highway, a great national turnpike road, and that in good faith, if it took the money to expend at this end of the road, it was bound to complete the work of the kind which it undertook to construct.

Sir, here I rest my argument upon this proposition that Congress afterward utterly abandoned the idea of completing that work; and, having abandoned the idea of completing the work, it thought it but fair and just not to retain the two per cent. Congress did not execute the compact by making such a road as the parties intended. But it undertook to do better; it undertook to make a great national highway, with the obligation inevitably resting upon it in morals, in ethics, in justice, to complete that work. Afterward, for reasons sufficient, it saw fit to abandon the completion of that work and to surrender the road to the States within which it lay; and having done that, seeing that it had not executed the compact, seeing that it had not rendered an equivalent to that, by completing the road which it had undertaken; having determined not to complete that road, having surrendered it to the States respectively in which its parts lay, having clothed them with the power to convert it from a free road into a tax-paying road, a toll-gathering road, it thought it nothing more than justice that it should not hold on to the two per cent.

No pen had ever been put on paper in any Department of this Government charging the

States of Ohio, Indiana, or Illinois in account with one dollar expended upon the National road. No such account legally exists to this day; none has ever existed. The money was still in the Treasury of the United States, unappropriated, so far as any account in the Treasury Department showed, to any such purpose. In 1857, in view of these circumstances: that Congress had neither literally executed the compact, nor executed it substantially, by carrying out the plans which it had adopted for a great national turnpike; having abandoned the completion of the road, having surrendered it to the States, having given to Maryland, to Pennsylvania, and Virginia the road within their borders, toward which they had never contributed one cent except their quota out of the national Treasury—having given it to them as their property, with full power to levy such tolls as they saw fit, then, seeing that it had not executed this contract, nor completed that which it had undertaken as an equivalent to its execution, and having determined to abandon all further attempt to execute it, Congress justly, wisely, and properly, saw fit to provide that the two per cent. should be paid to these States.

Now, sir, that is the statement of the case. But that is not all. There were other considerations which moved Congress to take that course. I ought, perhaps, however, to have called the attention of the Senate to the time when Congress did this thing. Congress began the cession of this road to the States in which it lay, I think, as early as 1832, the first act of cession being the cession to Ohio. And that was followed in 1834, if my memory is right, by cessions to the States of Virginia, Pennsylvania, and Maryland. So that you see, in 1834, twenty odd years before the passage of this act of 1857, Congress had determined never to complete that road, and it never did expend a dollar upon it after those cessions. It abandoned its completion utterly and absolutely.

But, Mr. President, as I said, there were other considerations that induced Congress to think it was right in 1857 that this two per cent. should not be withheld from the States. What were they? Those other considerations were these: Of all the new States in this Union those which have been treated—I will not say most harshly, but with the least liberality—are these three States of Ohio, Indiana, and Illinois. I have said already, in respect to Ohio, that there is not one foot of soil owned by an individual in that State that was not paid for. Our people never had any homestead grant. Furthermore, the grants made by Congress to the State of Ohio of lands for purposes of improvement amount to only 2,066,000 acres; to Indiana 3,600,000 acres in round numbers—not quite so much—and to Illinois 5,772,000 acres; but that includes the grant to the Illinois Central railroad, which was nearly half of it; and in respect to it we all know that Congress took the alternate sections out of market unless they should be paid for at double the then minimum price of the public lands. It made the minimum price $2 50 an acre, so that in a money point of view Congress never lost one dollar by that grant to the Illinois Central railroad. On the contrary, it made money out of it, for it brought into market a large body of public lands that might have remained unsold to this day if that grant had not been made. Therefore, properly speaking, the two and a half millions granted to the Illinois Central railroad ought to be deducted from the grant made to that State, which would leave her grants only about three and a quarter million acres of land.

But how was it with the other States that have come into the Union and were in it in 1857? Congress had granted to them as follows: to your own State, Mr. President, (Mr. FERRY, of Michigan, in the chair,) 13,467,000 acres; to Wisconsin, 7,400,000 acres; to Iowa, 7,000,000 acres; to Minnesota, 7,000,000 acres. That was the state of the case. Congress had adopted a much more liberal policy, and not only had it granted to these other new States three times, and in one case six times, what it granted to the people of Ohio, it had done far more than that: it had not required them to relinquish the right of taxation; it had put no such onerous burdens on them.

But that is not all. It had given to their people first the right of preëmption, a most valuable right, and which the people of Ohio never possessed. Then came the homestead law under which thousands and thousands of homesteads have been acquired on the payment of simply the land office fees, I believe about ten dollars.

Congress you see, therefore, had adopted a much broader, and more liberal, and I must say a much wiser and more just policy toward settlers in the western States; and in view of the fact that it treated them with that liberality, it was asking very little, I think, on the part of Ohio, the first of the States in that great territory, and whose people had paid for every acre of their lands, that the paltry sum of $400,000 should be paid to them. And it was asking very little on the part of Indiana, in view of like circumstances, that the like sum should be paid to her; and in the same way with Illinois; it was asking very little, and by no means balancing the account upon the principle of equality between the States, that Illinois should ask that the half million, or something like that, of the two per cent. fund should be paid to her.

These I am bound to say were the views of Congress when that act of 1857 was passed, and they were carried out in the case of Missouri, which stood in the same category, by paying to her her full per cent. And now, sir, after other States have been so much more benefited, after Congress has dealt so much more liberally with them, after the Government has not executed this compact according to the understanding of the parties when it was made, nor has it completed that equivalent for execution, the construction of the National road, it does seem to me that the claim of these States ought not to be de-

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nounced as an attempt to get money under false pretenses, as a claim whose audacity is its principal recommendation.

A few words more, sir, and I shall not detain the Senate longer. I ought, in support of the views I have presented, that Congress did assume to finish the National road, to refer the Senate to two most able reports made on that subject; one in the Senate, and the other in the House of Representatives. The one in the House of Representatives, made during the Twenty-Ninth Congress in 1846, is as conclusive a piece of reasoning as I ever read. It showed that Congress had utterly abandoned the idea of completing that road, and investigated the question whether Congress was bound in good faith to complete it, and certainly no stronger case could be made out.

While I am on this branch of the subject, allow me to say one thing in regard to Indiana and Illinois in which they stand on a little different footing from Ohio—not but that the principle that pays one of the States pays all three. I have said that according to the understanding at the time the compact was made with Ohio no such great national work as this was contemplated. I have said that there was then no turnpike in all the United States, and what the people expected was a good wagon-road. That is true, but how was it with Indiana? Indiana came into the Union in 1816. How was it with Illinois? She came into the Union in 1818; and similar provisions are found in the enabling acts of both those States, and also in the case of Missouri, which came in in 1820. What road did they expect to be made to their States and through them? Manifestly they expected the Cumberland road, the National road, and they had a right to expect it, because Congress had commenced the construction of that road in 1806, and had declared in the first acts on the subject that of the amounts expended, certain appropriations from time to time should be reimbursed out of the two per cent. fund of Ohio. Therefore, Indiana, when she made a similar compact with the General Government, looking at the fact that Congress was building this road, this great national turnpike, and that it was expending upon it the two per cent. fund of Ohio in terms at least according to the acts of Congress, had a right to say, "this is the road that was in contemplation of the parties when we made this compact;" and Illinois had a right to say the same thing; and having a right to say that, they had a clear right in honor and justice to say, "that road you must complete."

In that they stand on a different footing from Ohio. Ohio, when she made her compact, had reference to no particular road; but Indiana and Illinois and Missouri must have understood this compact as relating to that road which was not only projected, but actually laid out, and had a right therefore to expect the General Government to do what it had declared it would do, what it had passed act after act to accomplish, to wit, that it would complete that road.

Has it ever done it? Why, sir, it has never completed it through Ohio. The truth is, it has never completed it to Ohio. It never has bridged the Ohio river; but the bridge across that river had to be built by private individuals at an expense of something like a million dollars. For sixty miles in the western part of the State it never completed the road at all. It only completed it to the city of Springfield, sixty miles east of the western boundary of Ohio. It never completed it through Indiana. The Senators from Indiana can tell how that matter is better than I. It did still less in the State of Illinois. It requires, however, no testimony of Senators on that subject. Here is the report of Colonel Totten that to finish the road to the Mississippi river would require an expenditure of nearly $8,000,000 more. The amount required to complete it exceeds the amount already expended upon it, so that Congress left the work half done, and only half done when it abandoned the idea of completing it at all.

Under those circumstances, Mr. President, not having completed that road which Indiana had in her mind when she entered into that compact, not having completed that road which Illinois had in her mind when she entered into that compact, not having made the road that the people of Ohio had in their minds when they made their compact, with what fairness, with what show of equity, or justice, or good faith can Congress now say we will retain the two per cent. that was provided for in the enabling acts of those States?

Mr. President, I do not know that it is necessary for me to take up more of the time of the Senate. I should like very well to read these acts of Congress, but I suppose it is hardly necessary, and if it were, we are so cramped for time that I have not the power to do so.

Before I take my seat I wish to know if there is any objection to considering the House bill as a substitute for the Senate bill under consideration. If there is not, I ask that by unanimous consent the House bill may be considered as substituted for the Senate bill.

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